

MAR 23 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

J. ISIDRO GERARDO CORONA-
CASTANEDA, a.k.a. Isidro Gerardo
Corona-Castaneda; Isidro Corona-
Castaneda; Isidro Gerardo Corona,

Defendant - Appellant.

No. 04-10088

D.C. No. CR-03-05380-REC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, Senior Judge, Presiding

Submitted March 14, 2006^{**}
San Francisco, California

Before: RYMER, W. FLETCHER, and CLIFTON, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

In 1988, J. Isidro Gerardo Corona-Castaneda received a felony conviction for rape by force in violation of California Penal Code § 261. In 2003, he pled guilty to being a deported alien found in the United States in violation of 8 U.S.C. § 1326. The district court sentenced him to a 77-month term of imprisonment. Corona-Castaneda argues that the maximum statutory sentence under § 1326 is only two years because rape was not an “aggravated felony” at the time of his 1988 conviction. We hold that the 77-month sentence does not exceed the statutory maximum.

The maximum term of imprisonment under § 1326 depends on the defendant’s criminal history. The default maximum term is two years. 8 U.S.C. § 1326(a). The maximum term rises to ten years if the defendant’s “removal was subsequent to a conviction for commission of,” *inter alia*, “a felony (other than an aggravated felony).” *Id.* § 1326(b)(1). The maximum term further increases to twenty years if the defendant’s “removal was subsequent to a conviction for commission of an aggravated felony.” *Id.* § 1326(b)(2).

Regardless of whether Corona-Castaneda’s prior rape conviction now counts as an “aggravated felony,” it certainly qualifies as “a felony (other than an aggravated felony).” Under § 1326(b)(1), the statutorily authorized maximum sentence is 120 months, which is far greater than the 77-month sentence imposed

in this case. We hold, therefore, that the district court's sentence did not exceed the statutory maximum.

We grant a limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005).

Sentence **VACATED** and **REMANDED** under *Ameline*.